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| LOCAL COMMISSIONERS MEMORANDUM |
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Transmittal No: 92 LCM-112

Date: July 23, 1992

Division: Income Maintenance

TO: Local District Commissioners

SUBJECT: Recovery of Security Deposits from Landlords

ATTACHMENTS: None

Chapter 165 of the Laws of 1991 amended Social Services Law Section 143-c, effective June 12, 1991, to require Social Services districts (SSD) who pay security deposits to make "diligent efforts" to recover such deposits from landlords, as allowed by law. Department regulation 352.6(b)(3) was amended April 2, 1992, effective April 22, 1992, to conform to this change in the Social Services Law.

Social Services Law (Section 143-b) and Department regulations (18 NYCRR 352.6) allow SSDs to provide money to landlords as security against non-payment of rent or for client caused damages. If the client on whose behalf the security was paid moves leaving unpaid rent or client caused damages (as confirmed by a pre and post tenancy inspection), the amount of the security deposit retained by the landlord becomes an overpayment subject to recoupment and recovery. These are the only circumstances under which a security deposit paid by an SSD can be retained by a landlord or recouped or recovered from a client. We recommend that, whenever cash security is paid to a landlord, the SSD and the landlord sign an agreement detailing that the security can only be retained for non-payment of rent or client caused damages. Cash security should be returned by the landlord to the SSD if these two conditions do not exist when the tenant moves.

Article 7 of the General Obligations Law allows landlords to require security against a tenant's breach of a lease or rental agreement. A lease or rental agreement is between the landlord and the tenant only. Article 7

also requires landlords to deposit the security in a bank or trust company not to be mingled with other funds or to become an asset of the landlord. This law provides that until the security is retained by the landlord according to the terms of the lease or agreement (i.e. tenant moves owing rent), the security continues to be the money of the person making the security deposit. In the case of an SSD paying a security deposit, the security deposit continues to be the money of the SSD until it is retained by the landlord as per the agreement between the landlord and the SSD.

Chapter 165 requires SSDs to make "diligent efforts" to recover security deposits from landlords who retain them in violation of law.

Examples of when a landlord retains a security deposit in violation of law would include instances where a pre and post tenancy inspection do not corroborate a landlord's claims for tenant caused damages; when the SSD has verification that rent was paid for the period a tenant resided in an apartment and the landlord claims unpaid rent; when the landlord retains the security for reasons other than those specified in the agreement between the SSD and the landlord; or the SSD has verification that the landlord commingled the security with other funds.

"Diligent efforts" would include such measures as verification that the landlord's claim to the security is valid (i.e. rent was unpaid; damages were client-caused and in the amount specified by the landlord; the landlord was allowed such retention for a reason specified in the SSD agreement), letters to the landlord requesting return of the security if security is held in violation of law, referral to a collection agency, and taking the landlord to small claims court.

This information will be included in a forthcoming administrative directive consolidating security deposit issues.

Any questions on this issue should be directed to Maureen Standish at 1-800-342-3715, extension 3-6555.

Oscar R. Best, Jr.
Deputy Commissioner
Division of Income Maintenance